Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules	))))	WC Docket No. 04-259 RM-10603
	)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's *Notice*[1] and Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on the proposals of the National Exchange Carrier Association ("NECA") and Verizon to shift the recovery of common line costs away from Subscriber Line Charges ("SLC") paid by multi-line business customers to disfavored subsidy mechanisms funded by residential and single-line business customers, as well as by multi-line business customers.

SUMMARY

NECA and Verizon ask the Commission to modify its rules to permit them to substantially reduce the number of SLCs assessed on customer-ordered exchange access service provisioned using digital, high capacity T1 interfaces when the customer supplies the terminating channel equipment ("T1" lines).[2] Further, the *Notice* seeks comment on whether the

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[1] *National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules*, Order Granting Petition for Rulemaking, Notice of Proposed Rulemaking, And Order Granting Interim Partial Waiver, FCC 04-174, 19 FCC Rcd. 13591 (2004) ("*Notice*"), published in 69 Fed. Reg. 50141 (Aug. 13, 2004). The Commission extended the comment period upon the Joint Motion of BellSouth, SBC and Verizon, 2004 WL 2255103 (rel. Oct. 6, 2004).

[2] *Notice* ¶ 1. NECA's petition sought relief for rate-of-return carriers only. Verizon in its Reply Comments on the NECA Petition, in RM-10603, filed Dec. 2, 2002, requested that the rule

Commission should modify its rules relating to the number of SLCs assessed on customer-ordered exchange access service provisioned using Primary Rate Interface ("PRI") Integrated Service Digital Network ("ISDN") lines.[3] As the *Notice* recognizes, however, the true impact of reducing the number of applicable SLCs would be to *shift* the recovery of local exchange carriers' ("LECs") common line costs from SLCs paid by their own *business* end-users to subsidy mechanisms funded predominantly by residential and business customers of other carriers.[4] These subsidy mechanisms include the primary interexchange carrier charge ("PICC") and the carrier common line charge ("CCLC"), paid by customers of interexchange carriers ("IXCs"), and the universal service fund ("USF"), which is paid by *all* customers of interstate telecommunications services.[5]

For the reasons stated below, the Commission should *reject* the LECs' proposals to reduce the SLC assessments on multi-line business customers that purchase T1 lines. Nor should the Commission modify its rules to reduce the number of SLCs assessed on PRI ISDN lines. However, to the extent the Commission finds compelling reasons to reduce SLC assessments on the LECs' multi-line business customers, the Commission should adopt corresponding rules to ensure that any resulting revenue shortfalls incurred by the LECs are *not* shifted to the subsidy mechanisms paid by consumers generally and to ensure that there are no increases to the SLCs paid by residential/single-line business customers. Specifically, the Commission should adopt modest increases to the multi-line business SLC cap to allow the LECs to recover any such

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change be applied to price cap carriers for new T-1 service offerings. *Notice* ¶ 9.

[3] *Notice* ¶ 20.

[4] Indeed, if the LECs sought only to reduce SLCs, they could do so *voluntarily* without an FCC rule change. *E.g.,* 47 C.F.R. § 69.104(r)(7).

[5] *Notice* ¶¶ 2-3.

revenue "losses." This approach is consistent with the Commission's policy of recovering costs from the cost-causer (the LECs' own multi-line business end-users) and minimizing reliance on the inefficient subsidy mechanisms.

ARGUMENT

There can be no legitimate debate that the most efficient pro-competitive method for a LEC to recover common line costs is through a flat per-line charge assessed against the LECs' own end-user customers, *i.e.,* a SLC charge. For the past 20 years, the Commission has recognized that "a rate structure in which the customer causing the cost to be incurred bears that cost is in the public interest because only through such pricing can competition in the telecommunications market flourish."[6] The Commission's SLC requirement does exactly that: "it reduces subsidies by recovering more costs from the cost causer" and "also creates a rate structure that is more pro-competitive than the existing one [which relied more heavily on IXC subsidies]."[7]

It is also beyond legitimate debate that permitting LECs to shift common line costs that could have been recovered through the SLC to the subsidy mechanisms, *i.e.,* the PICC, CCLC and universal service mechanisms, creates substantial inefficiencies because those subsidy

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[6] *MTS WATS Market Structure*, Memorandum Report and Order, 97 F.C.C.2d 834, ¶ 37, n.19 (1984) ("*MTS/WATS Order*").

[7] *Access Charge Reform, Price Cap Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges,* First Report and Order, 12 FCC Rcd. 15982, ¶ 75 (1997) ("*Access Charge Reform Order*"); *Access Charge Reform, Price Cap Review for Local Exchange Carriers, Low Volume Long-Distance Users, Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd. 12962, ¶ 120 (2000) ("*CALLS Order*") ("As we have maintained, loop costs are incurred by the LECs, not IXCs").

mechanisms fail to recover the costs directly from the cost-causer, resulting in incorrect market signals, transaction costs, and other market distortions. The PICC is a flat rate per-line charge assessed by price cap LECs on IXCs in order to permit price cap LECs to recover some common line costs that are not recovered through the SLC.[8] As the Commission has consistently recognized, PICCs create myriad market inefficiencies because the PICC is not assessed against the cost-causer (the LECs' own end-user customer). *See, e.g., CALLS Order* ¶ 19 ("Unfortunately, the advent of PICCs has also created market inefficiencies");[9] *MAG Order* ¶ 67[10] ("eliminating the PICC would make the rate structure more efficient and more closely aligned with costs").[11] Similarly, the CCLC is a per minute charge assessed by price cap carriers against IXCs, and the "Commission has concluded that the CCL[C] is an 'inefficient cost-recovery mechanism and implicit subsidy' which is not sustainable in a competitive environment."[12] Simply put, there is a strong presumption that it would be contrary to the public

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[8] *Notice* ¶ 3.

[9] *See also CALLS Order* ¶ 78 ("eliminating the . . . PICCs . . . establishes a straightforward, economically rational pricing structure which enables consumers to make a choice among competing providers thorough head-to-head comparisons and better promotes competition by sending potential entrants economically correct entry incentives.")

[10] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256; Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd. 19613 (2001) ("*MAG Order*").

[11] In fact, the PICC was adopted by the Commission only as an "interim mechanism," that was intended to be phased out. *CALLS Order* ¶ 111 (citing *Southwestern Bell Tel. Co.* v. *FCC*, 153 F.3d 523, 538 (8th Cir. 1998)).

[12] *MAG Order* ¶ 62, *citing Access Charge Reform Order* ¶ 69.

interest to shift price cap LECs' common line cost recovery from SLCs to the PICCs or CCLCs.[13]

NECA's proposal to shift recovery of rate-of-return LECs' common line costs from SLCs is particularly egregious. Under the *MAG* rules, rate-of-return LECs that are unable to fully recover common line costs through the SLCs are subsidized by the Universal Service Fund.[14] The USF is paid for by surcharges on the bills of *all* customers of interstate telecommunications services, including residential customers. Under NECA's proposal, therefore, consumers nationwide would be forced to subsidize rate-of-return LECs' multi-line business customers through the USF. Aside from the fact that the NECA proposal would increase the current USF – which is already over-burdened, with the surcharge hovering near nine percent (and possibly going even higher), the suggestion that the telephone bills of consumers least able to substitute services (*e.g.*, broadband-based VoIP services) that have little or no USF contribution obligation should be increased, is contrary to the public interest.[15] Indeed, if this proposal were adopted, a hundred years of telecommunications public policy aimed at protecting captive consumers would suddenly be turned on its head.

Given the inefficiencies associated with these subsidy mechanisms, the Commission has endeavored for the past seven years to reduce substantially or eliminate these subsidies and

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[13] Indeed, the Communications Act requires the elimination of implicit subsidies. *See COMSAT Corp.* v. *FCC*, 250 F.3d 931, 938 (5th Cir. 2001); *Alenco Comm.* v. *FCC*, 201 F.3d 608, 623 (5th Cir. 2000); *Texas Office of Pub. Util. Counsel* v. *FCC*, 183 F.3d 393, 425 (5th Cir. 1999) ("*TOPUC I*"); *Texas Office of Public Utility Counsel* v. *FCC*, 265 F.3d 313, 318 (5th Cir. 2001) ("*TOPUC II*").

[14] *Notice* ¶ 2, citing 47 C.F.R. § 54.901.

[15] Indeed, it has been reported that the USF contribution factor may increase to 12.5%. *See* "Rural Phone Subsidy's Shortfall Could be Costly for Consumers," *Wall Street Journal*, Nov. 1, 2004, p. A2.

replace them with SLCs to ensure that rates are recovered from the cost-causer – *i.e.,* the LECs' end-user customers. In 1997, for example, the Commission increased the price cap LECs' SLC cap for multi-line business customers from $6.00 to $9.00.[16] The Commission explained that doing so is justified because "it reduces subsidies by recovering more costs from the cost causer" and "also creates a rate structure that is more pro-competitive than the existing one [which relied more heavily on IXC subsidies]."[17] The Fifth Circuit agreed with the Commission's rationale and rejected LEC challenges to the SLC increase.[18] In 2000, the Commission again increased the amount of common line costs recovered by price cap LECs through the SLC by increasing the single-line and multi-line residential and business SLC caps, and adopting comparable SLC caps for rate-of-return carriers effective January 1, 2002.[19] Again, the Commission explained that "[o]ur actions . . . are in furtherance of our goal of having . . . LECs recover a large share of their [common line costs] from end users who cause them instead of [IXCs]."[20]

While increasing the amount of common line costs that LECs are required to recover through SLCs, the Commission has correspondingly decreased the amount of common line costs that LECs are permitted to recover through subsidy mechanisms. As noted, the Commission is phasing out PICCs and CCLCs, and is in the process of substantially reforming the universal service mechanism. In fact, the Commission is currently endeavoring to shift all access cost

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16 *Access Charge Reform Order* ¶¶ 68, 78-80.

17 *Id.* ¶ 75.

18 *TOPUC II*, 265 F.3d at 321-23.

19 *CALLS Order* ¶¶ 70-72, 76; *MAG Order* ¶¶ 42-56.

20 *CALLS Order* ¶ 77; *see also MAG Order* ¶¶ 41-44.

recovery to more cost-causative methods, where all carriers recover virtually all their costs from their own customers.[21]

The LECs' proposal would have the Commission reverse these longstanding policies. Under the Commission's current rules, the LECs are required to assess a SLC on each activated channel on a T1 or PRI ISDN line provisioned to a multi-line business customer, up to 24 SLCs for a T1 line and up to 5 SLCs for a PRI ISDN line.[22] A LEC is permitted to receive subsidies (PICCs and CCLCs for price cap LECs, and universal service fund payments for rate-of-return LECs) only to the extent that its total revenue requirement (total common line costs) exceed the total amount of revenue that the LEC is eligible to recover from SLCs.[23] The LECs' proposal is to reduce the number of SLCs that can be assessed on T1 lines (and the *Notice* (¶ 20) seeks comment on the number of SLCs that should be assessed on PRI ISDN lines). Reducing the number of SLCs applicable to T1 lines and PRI ISDN lines would reduce the amount of SLC revenues the LECs are eligible to recover.[24] The LECs thus request that the Commission permit them to recover a substantial portion of those "lost revenues" from the subsidy mechanisms.

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[21] *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order On Remand And Report And Order, 16 FCC Rcd. 9151 (2001); *Developing a Unified Intercarrier Compensation Regime,* Notice of Proposed Rulemaking, 16 FCC Rcd. 9610 (2001); *see also* Intercarrier Compensation and Universal Service Reform Plan submitted by the Intercarrier Compensation Forum ("ICF") in *ex partes,* filed August 16, 2004 and October 5, 2004, in CC Docket No. 01-92. The ICF consists of AT&T, Global Crossing North America, General Communications, Iowa Telecom, Level 3 Communications, MCI, SBC, Sprint and Valor Communications.

[22] *Notice* ¶¶ 4-6.

[23] *Id.* ¶¶ 2-3.

[24] The reduced number of SLCs would be partly offset by increased SLC rates, including rates for residential/single-line business customers that are currently below the $6.50 cap. Because of the existing caps on SLC rates, however, only a portion of the lost revenues in aggregate could be recovered from higher SLCs.

Because the LECs' proposal seeks to reverse the Commission's longstanding policy of maximizing common line cost recovered through SLCs and minimizing subsidies, the LECs bear a heavy burden to justify their proposal.[25] And submitting a cost study purporting to show that the current SLC assessment mechanism, in some cases, permits LECs to recover more than the cost of a T1 or a PRI ISDN line is *not* sufficient to satisfy that burden.[26] The Commission has long recognized that the current SLC caps result in over-recovery for some services (or geographic areas) and under-recovery for other services (or geographic areas).[27] But the Commission has expressly declined to "deaverage" SLC rates to the extent any reductions in SLC revenues would increase LEC recovery from the subsidy mechanisms. *E.g., CALLS Order* ¶ 128 (declining to permit deaveraging of SLC rates until the PICC and CCLC have been fully eliminated). Thus, the mere fact that the SLCs paid by some LEC multi-line business customers may be subsidizing the common line costs incurred by the LEC to serve other customers is *not* a sufficient justification for shifting such costs to subsidy mechanisms, such as PICC, CCLC and USF.

Accordingly, the Commission should *reject* the LECs' proposal to change the Commission's current SLC assessment rules. However, if the Commission nevertheless determines that there are compelling reasons to reduce the SLC assessments on multi-line business customers purchasing T1 and PRI ISDN services from the LEC, the Commission should adopt corresponding rules to ensure that the LECs do *not* recover those "lost" SLC revenues

[25] *E.g., TOPUC II,* 265 F.3d at 322 ("we cannot uphold [the Commission's] decision to increase the SLC caps if it represents an unexplained reversal of past FCC policy"); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Ins. Co.*, 463 U.S. 29, 56 (1983).

[26] *Notice* ¶¶ 18-25.

[27] *CALLS Order* ¶¶ 113-128; *MAG Order* ¶¶ 57-60.

from the subsidy mechanisms paid by other consumers. One way for the Commission to accomplish this would be to adopt modest increases to the SLC *caps* for all multi-line business customers. Critically, however, SLCs charged to residential/single-line business customers should *not* be increased to make up any revenue shortfalls caused by reducing the SLC burden on the T1 and PRI ISDN lines used by multi-line business customers. Therefore, in addition, the methodology used to calculate maximum SLC rates should result in these lost SLC revenues being recovered through multi-line business SLCs rather than through residential or single-line business SLCs. This approach ensures that the LECs continue to recover their common line costs from the "cost-causers," and is consistent with the Commission's policy to phase out reliance on the disfavored subsidy mechanisms. Moreover, modest increases to the SLC caps for multi-line business customers are unlikely to affect the affordability of local telephone service. As the Commission has recognized, "cost of service is unlikely to be a factor that would cause multi-line users not to subscribe to telephone service."[28]

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[28] *Access Charge Reform Order* ¶ 74.

CONCLUSION

For the foregoing reasons, the Commission should *not* reduce the SLCs applicable to T1 or ISDN PRI lines or, if it does so, it should adopt those changes with the modifications described herein.

Respectfully submitted,

AT&T Corp.

By /s/ Judy Sello

Leonard J. Cali
Lawrence J. Lafaro
Judy Sello
AT&T Corp.
Room 3A229
One AT&T Way
Bedminster, NJ 07921
(908) 532-1846

David L. Lawson
Christopher T. Shenk
Sidley Austin Brown & Wood L.L.P.
1501 K St. N.W.
Washington, D.C. 20005
(202) 736-8000

Attorneys for AT&T Corp.

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